



# Guideline for representing clients at the Administrative Appeals Tribunal

## Introduction

Registered Migration Agents (RMAs) who represent their clients at the Administrative Appeals Tribunal (the Tribunal) are expected to have the requisite knowledge, and to conduct themselves in a way that is of assistance to their clients and the Tribunal member in making a decision on the review matter.

This guide has been developed to assist RMAs to understand their role when representing clients at the Tribunal, and to comply with their obligations under the Code of Conduct for RMAs (the Code) and the practice directions of the Tribunal.

## Maintain knowledge and awareness of the Tribunal's current practice directions

RMAs representing clients at the Tribunal are expected to maintain their knowledge and awareness of the Tribunal's relevant practice directions, which are subject to change from time to time. The current practice directions, which are published on the Tribunal's website, are in relation to:

- [Migration and Refugees Matters \(Practice Direction\)](#)
- [Conducting migration and refugee reviews \(President's Direction\)](#)
- [Prioritising cases in Migration and Refugee Division \(President's Direction\)](#)
- [COVID-19 Special Measures – Migration and Refugee Division \(Practice Direction\)](#)

### Relevant Code of Conduct clause

Clause 2.5 of the Code requires RMAs to:

- take appropriate steps to maintain and improve their knowledge of legislation relating to migration procedure and portfolio policies and procedures; and
- maintain a professional library.

## The role of an RMA at Tribunal hearings

During a Tribunal hearing, the role of an RMA is also to assist the Tribunal:

- to understand the issues that arise in the matter before it
- to afford procedural fairness to applicants

- by making submissions that deal with all relevant criteria for the sponsorship, nomination or visa application
- by providing submissions and evidence in advance of a hearing to give the Tribunal member time to consider it prior to the hearing
- by following the Tribunal practice directions.

#### Relevant Code of Conduct clause

Clause 2.19 of the Code requires RMAs to provide sufficient relevant information to a review authority to allow a full assessment of all the facts against the relevant criteria.

## Submissions and supporting evidence

RMAs are expected to provide high quality, professional submissions to the Tribunal. The submissions and documentary evidence should:

- be logically structured
- provide focussed, concise information relevant to the statutory criteria of the matter under review
- deal with all statutory criteria relevant to the immigration matter under consideration
- be provided in a timely fashion
- include a copy of the Departmental delegate's primary decision for which review is being sought.

Submissions and supporting documentary evidence **should not be**:

- unnecessarily voluminous or have duplicated documentation as this results in inefficiencies in considering a matter
- limited to the matters that formed the basis for the refusal. Tribunal members conduct administrative review *de-novo* – which means they are assessing whether all statutory criteria relevant to a matter are met. The Tribunal therefore requires the relevant information to do so.
- submitted late, such as on the eve of a Tribunal hearing.

#### Relevant Code of Conduct clauses

- Code clause 2.1 requires registered migration agents to act in accordance with the law and the legitimate interests of their client and to deal with their clients competently, diligently and fairly.
- Code clause 2.3 requires registered migration agents to show professionalism that reflects a sound working knowledge of migration law and processes and a capacity to provide accurate and timely advice.
- Code clause 2.18 requires registered migration agents to act in a timely manner in relation to providing submissions.
- Code clause 2.19 requires registered migration agents to provide sufficient relevant information to a review authority to allow a full assessment of all the facts against the relevant criteria.
- Code clause 2.21 requires registered migration agents to submit applications with accompanying documentation.

## Vexatious or grossly unfounded applications

The OMARA understands that there may be some circumstances in which a seemingly vexatious or grossly unfounded review application may be submitted. An example is where the RMA may be seeking a Tribunal outcome for their client in order to pursue Ministerial Intervention. In the absence of such circumstances, the OMARA may conduct an investigation into RMAs who are assisting their clients to lodge seemingly vexatious or grossly unfounded applications for review by the Tribunal.

A further example is that the OMARA has received feedback from the Tribunal that some RMAs have been seeking review of subclass 186 and 187 visa refusal decisions where the associated nomination has been refused and there is no review lodged for the nomination. Such review applications have no prospects for success.

### *Relevant Code of Conduct Clause*

- Code clause 2.6 requires RMAs to be frank and candid with their clients about the prospects of success of applications made under the Migration Act or Migration Regulations.
- Code clause 2.7 requires RMAs to advise their clients in writing on the probability of a successful outcome for their application.
- Code clause 2.17 requires registered migration agents to not encourage clients to lodge vexatious or grossly unfounded applications and to advise clients in writing where, in the migration agent's opinion, an application is vexatious or grossly unfounded.

## Misleading the Tribunal

RMAs should not deliberately or negligently mislead the Tribunal.

Code clause 2.9 prohibits registered migration agents from making statements in support of an application or from encouraging the making of statements which they know or believe to be misleading or inaccurate.

## Extract of all relevant Code of Conduct clauses for the Tribunal

### **Maintain knowledge and awareness of the Tribunal's relevant practice directions**

*2.5 A registered migration agent must:*

*(a) take appropriate steps to maintain and improve his or her knowledge of the current versions of:*

- (i) the Migration Act 1958; and*
- (ii) the Migration Regulations 1994; and*
- (iii) other legislation relating to migration procedure; and*
- (iv) portfolio policies and procedures; and*

*(b) either:*

- (i) maintain a professional library that includes those materials; or*

*(ii) if the agent's employer, or the business in which he or she works, maintains a professional library that includes those materials - take responsibility for ensuring that he or she has access to the library.*

*Note 1: A comprehensive list of the materials mentioned in subparagraphs (a) (iii) and (iv) may be obtained from the Professional Library page of the Authority's web site ([www.mara.gov.au/becoming-an-agent/registration-requirements/professional-library/](http://www.mara.gov.au/becoming-an-agent/registration-requirements/professional-library/))*

## **Providing submissions and supporting evidence in a professional and timely way**

*2.1 A registered migration agent must always:*

- a) act in accordance with the law (including, for an agent operating as an agent in a country other than Australia, the law of that country) and the legitimate interests of his or her client; and*
- b) deal with his or her client competently, diligently and fairly.*

*2.3 A registered migration agent's professionalism must be reflected in a sound working knowledge of the Migration Act and Migration Regulations, and other legislation relating to migration procedure, and a capacity to provide accurate and timely advice.*

*2.18 A registered migration agent must act in a timely manner if the client has provided all the necessary information and documentation in time for statutory deadlines. For example, in most circumstances an application under the Migration Act or Migration Regulations must be submitted before a person's visa ceases to be in effect.*

*2.19 Subject to a client's instructions, a registered migration agent has a duty to provide sufficient relevant information to the Department or a review authority to allow a full assessment of all the facts against the relevant criteria. For example, a registered migration agent must avoid the submission of applications under the Migration Act or Migration Regulations in a form that does not fully reflect the circumstances of the individual and prejudices the prospect of approval.*

*2.21 A registered migration agent must not submit an application under the Migration Act or Migration Regulations without the specified accompanying documentation. For example, in a marriage case, threshold documentation would include a marriage certificate and evidence that the sponsor is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen, without which assessment of the case could not proceed (unless the agent has a reasonable excuse or the client has requested the agent to act despite incomplete documentation.*

## **Vexatious or grossly unfounded applications**

*2.6 To the extent that a registered migration agent must take account of objective criteria to make an application under the Migration Act or Migration Regulations, he or she must be frank and candid about the prospects of success when assessing a client's request for assistance in preparing a case or making an application under the Migration Act or Migration Regulations*

*2.7 A registered migration agent who is asked by a client to give his or her opinion about the probability of a successful outcome for the client's application:*

- a) must give the advice, in writing, within a reasonable time; and*
- b) may also give the advice orally to the extent that the oral advice is the same as the written advice; and*

- c) must not hold out unsubstantiated or unjustified prospects of success when advising clients (orally or in writing) on applications under the Migration Act or Migration Regulations.*

*2.17 If an application under the Migration Act or the Migration Regulations is vexatious or grossly unfounded (for example an application that has no hope of success) a registered migration agent:*

- a) must not encourage the client to lodge the application; and*
- b) must advise the client in writing that, in the agent's opinion, the application is vexatious or grossly unfounded; and*
- c) if the client still wishes to lodge the application – must obtain written acknowledgment from the client of the advice given under paragraph (b)*

### **Misleading the Tribunal**

*2.9 A registered migration agent must not make statements in support of an application under the Migration Act or Migration Regulations, or encourage the making of statements, which he or she knows or believes to be misleading or inaccurate.*